Bi-Craft Litho, Inc. *and* Graphic Communication International Union, Local 546M. Case 8–CA–25629

February 14, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, COHEN, AND TRUESDALE

Upon a charge filed by the Union on July 20, 1993, the General Counsel of the National Labor Relations Board issued a complaint on September 3, 1993, against Bi-Craft Litho, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Copies of the charge and complaint were duly served on the parties. On October 15, 1993, the Respondent filed an answer to the complaint, denying the commission of any unfair labor practices.

On February 4, 1994, the parties filed a stipulation of facts and motion to transfer proceedings to the Board. The parties agreed that the stipulation of facts and attached exhibits constitute the entire record in this case, and that no oral testimony was necessary or desired by any of the parties. The parties further waived a hearing before an administrative law judge and the issuance of an administrative law judge's decision, and indicated their desire to submit the case directly to the Board for findings of fact, conclusions of law, and the issuance of an order. On July 14, 1994, the Board issued an order approving the stipulation and transferring the proceeding to the Board. Thereafter, the General Counsel and the Respondent filed briefs.

The Board has delegated its authority in this proceeding to a three member panel.

On the entire record in this proceeding, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation incorporated in the State of Ohio engaged in the printing industry. Annually, in the course and conduct of its business operations, the Respondent provides services valued in excess of $50,000 to Sherwin-Williams, Stouffers, Texaco, and Shell, enterprises within the State of Ohio which themselves each have annual gross revenues in excess of $500,000 and which each annually sell and ship goods and products valued in excess of $50,000 directly to points located outside the State of Ohio.

The parties stipulated, and we find, that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Stipulated Facts*

At all times material to this case, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in the following appropriate unit:

> All employees covered by the jurisdiction clause of [the collective-bargaining] agreement, excluding foremen and supervisors, performing any of the following work, shall without limitation, be covered by the terms of this contract: all work, processes, operations and products directly associated with the processing of lithographic production (including dry or wet), (Photoengraving, Intaglio, Gravure), Bookbinding and finishing or otherwise reproducing images of all kinds, or any other purpose, including without limitation any computerization, technological or other change, evolution or substitution for any work, process operation or product new [sic] or hereafter utilized in any of the methods or for any of the purposes described above.

Recognition has been embodied in a series of collective-bargaining agreements, the most recent of which was effective from May 1, 1992, to April 30, 1993.

On January 1, 1993, the Respondent employed five unit employees. Between January 31 and June 14, 1993, inclusive, four of these individuals quit their employment, and the Respondent hired three new employees. On about June 14, 1993, the Respondent withdrew recognition from the Union based on an asserted good-faith doubt as to the Union's continued majority status. The Respondent has stipulated that the ''sole reason for its asserted good-faith doubt as to the Union's majority status in the Unit was the 1993 changes in the identities of employees in the Unit . . . .''

B. *Contentions of the Parties*

The General Counsel contends that the stipulated facts establish that the Respondent's withdrawal of recognition violated Section 8(a)(5), as the Board has held that turnover in the unit, alone, is not sufficient to provide a lawful basis for withdrawal of recognition. In support, the General Counsel cites *Albany Steel*, 309 NLRB 442, 454–455 (1992), enfd. as modified 17 F.3d 564 (2d Cir. 1994); *Barclay Caterers*, 308 NLRB 1025 fn. 2 (1992); and *Columbia Portland Cement Co.*, 303 NLRB 880, 882–883 (1991), enfd. 979 F.2d 460 (6th Cir. 1992).

The Respondent asserts that, even if it is found to have ''technically'' violated Section 8(a)(5), the Board should order that an election be held rather than issue a bargaining order. In this regard, the Respondent asserts that its withdrawal of recognition was based in

part on a decertification petition filed on February 26, 1993, and supported by the signatures of three of the four unit employees. The Respondent asserts that, although the petition was dismissed pursuant to the settlement of charges filed by the Union alleging that the Respondent had unlawfully participated in the drafting and filing of the decertification petition,[1] that petition should nevertheless be considered by the Board in fashioning a remedy. Although none of these matters are part of the stipulation of facts submitted by the parties and approved by the Board, the Respondent asserts that the Board may take cognizance of the asserted facts because they are evidenced by official Board documents.

C. *Discussion*

It is well-settled that an incumbent union is afforded a presumption of continued majority status, which an employer may rebut by showing a good-faith doubt based on objective considerations. *Columbia Portland Cement Co.*, above 303 NLRB at 882; see also *Burger Pits*, 273 NLRB 1001 (1984), enfd. sub nom. *Hotel & Restaurant Employees Local 19 v. NLRB*, 785 F.2d 796 (9th Cir. 1986). Unit turnover alone, without more, is insufficient to establish such good-faith doubt. *NLRB v. Curtin Matheson Scientific*, 494 U.S. 775 (1990); see also *Barclay Caterers*, above at 1025 fn. 2.[2] Inasmuch as the Respondent has stipulated that the sole basis for its withdrawal of recognition on June 14, 1993 was unit turnover, we find that the withdrawal of recognition violated Section 8(a)(5) and (1).

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist and to take certain affirmative action necessary to effectuate the policies of the Act. Contrary to the Respondent, we find that a bargaining order is the appropriate remedy for the violation established in this case. Thus, we find no merit to the Respondent's contention that an election should be held instead in light of the asserted decertification petition. Initially, although, as noted above, some courts have directed the holding of elections under markedly different circumstances than those presented here, the Board's traditional remedy in cases of this type is to issue a bargaining order. We further note that the asserted decertification petition is not properly before us in this case, as it is not mentioned in the stipulation of facts which all parties—including the Respondent—agreed constitutes ''the *entire* record in this case'' (emphasis added).[3] Moreover, even if we were to accept the Respondent's untimely proffered averments concerning the petition as accurate, the alleged decertification petition was dismissed based on a settlement of charges that the Respondent unlawfully assisted employees in its preparation and filing. Under these circumstances, we would not in any event accord the asserted petition any weight as evidence of the employees' desires concerning representation for purposes of this proceeding.[4]

ORDER

The National Labor Relations Board orders that the Respondent, Bi-Craft Litho, Inc., Cleveland, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Graphic Communication International Union, Local 546M, as the exclusive bargaining representative of the employees in the appropriate bargaining unit described below.

[1] See *Bi-Craft Litho, Inc.*, Case 8–CA–25268. Documents attached by the Respondent to its brief appear to indicate that the charge was filed on March 3, 1993, and that the alleged settlement agreement was approved by the Regional Director for Region 8 on June 29, 1993.

[2] Unlike the Respondent, we find the Second Circuit's decision in *NLRB v. Albany Steel* is not to the contrary. The court there enforced the Board's finding that the employer unlawfully withdrew recognition from the union because the facts presented did not establish a good-faith doubt of the union's continued majority status. However, the court declined to enforce the Board's remedial bargaining order because, in the court's view, there was sufficient evidence placing the union's majority status in doubt to support the ordering of an election. The evidence cited by the court in this regard included the fact that no employees were paying dues, direct evidence that certain employees were dissatisfied with their representation, and the union's failure to secure a new collective-bargaining agreement or to file any grievances over a 3-year period. No evidence of this character is presented in this case, and nothing in the court's decision remotely suggests that it would find that employee turnover alone either privileged withdrawal of recognition or would justify withholding the Board's traditional remedy of a bargaining order.

We find the Respondent's reliance on *NLRB v. Laverdiere's Enterprises*, 933 F.2d 1045 (1st Cir. 1991) equally unconvincing. In that case, the court based its order of an election rather than a bargaining order on the fact that the employer had been presented with a decertification petition one name short of a proper showing of interest. The court found that this defect was the result of numerical error on the part of the petitioners and that the incomplete petition was prepared without employer involvement. Although the court referred to turnover within the bargaining unit, the turnover was the result of what the court found to be the Board's inordinate delay in processing the case.

[3] In this regard, we note that there is no *record* evidence to support the Respondent's averments concerning the decertification petition, including the authenticity of the documents attached to its brief.

[4] Member Cohen notes that there has been no *adjudication* that Respondent unlawfully assisted the decertification petition in Case 8–RD–1629. The informal settlement of the 8(a) case involving such allegations cannot defeat the rights of the petitioner in the RD case. See *Jefferson Hotel*, 309 NLRB 705 (1992); *Nu Aimco, Inc.*, 306 NLRB 978 (1992). However, it does not appear that the petitioner in Case 8–RD–1629 objected to the dismissal of his petition. In these circumstances, Member Cohen joins his colleagues in rejecting Respondent's contention that an election should be held.

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All employees covered by the jurisdiction clause of the collective-bargaining agreement between the Respondent and the Union which was effective from May 1, 1992 to April 30, 1993, excluding foremen and supervisors, performing any of the following work, shall without limitation, be covered by the terms of this contract: all work, processes, operations and products directly associated with the processing of lithographic production (including dry or wet), (Photoengraving, Intaglio, Gravure), Bookbinding and finishing or otherwise reproducing images of all kinds, or any other purpose, including without limitation any computerization, technological or other change, evolution or substitution for any work, process operation or product new or hereafter utilized in any of the methods or for any of the purposes described above.

(b) Post at its Cleveland, Ohio facility copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to recognize and bargain with Graphic Communication International Union, Local 546M, as the exclusive collective-bargaining representative of our employees in the unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions and conditions of employment for our employees in the bargaining unit:

> All employees covered by the jurisdiction clause of our collective-bargaining agreement with the Union that was effective from May 1, 1992 to April 30, 1993, excluding foremen and supervisors, performing any of the following work, shall without limitation, be covered by the terms of this contract: all work, processes, operations and products directly associated with the processing of lithographic production (including dry or wet), (Photoengraving, Intaglio, Gravure), Bookbinding and finishing or otherwise reproducing images of all kinds, or any other purpose, including without limitation any computerization, technological or other change, evolution or substitution for any work, process operation or product new or hereafter utilized in any of the methods or for any of the purposes described above.

BI-CRAFT LITHO, INC.